

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



August 29, 2002

ALL-COUNTY LETTER NO.: 02-63

TO: ALL-COUNTY WELFARE DIRECTORS
ALL CAPI PROGRAM MANAGERSReason For This Transmittal

- ☐ State Law Change
- ☒ Federal Law or Regulation Change
- ☐ Court Order or Settlement Agreement
- ☐ Clarification Requested by one or More Counties
- ☒ Initiated by CDSS

SUBJECT: SPONSOR-DEEMING CHANGES IN THE CASH ASSISTANCE
PROGRAM FOR IMMIGRANTSREFERENCE: MANUAL OF POLICIES AND PROCEDURES (MPP) SECTION
49-035.723(c)

The purpose of this All-County Letter is to advise counties of new requirements affecting sponsor deeming in the Cash Assistance Program for Immigrants (CAPI). The new requirements only affect immigrants whose sponsor has signed the New Affidavit of Support (New Affidavit or I-864). Immigrants whose sponsor signed the New Affidavit can be temporarily exempt from regular sponsor deeming if they meet requirements for the Indigence Exception. These immigrants will also be subject to the sponsor-deeming rules even if their sponsor is their spouse, or parent (for applicant/recipients who are minor children). The new requirements are effective for determining CAPI payments beginning September 1, 2002 or later.

BACKGROUND

Sponsor deeming refers to the requirement that a sponsor's income and resources be considered as belonging to the immigrant who is receiving or applying for CAPI. The sponsor is an individual who signs an Affidavit of Support agreeing to support an immigrant as a condition of that immigrant's admission to the United States as a permanent resident.

Welfare and Institutions Code Section 18940 states that federal and State laws governing the Supplemental Security Income/State Supplementary Payment (SSI/SSP) program must also govern CAPI. MPP, Section 49-035 states that detailed income rules for CAPI are found in 20 Code of Federal Regulations (20 CFR), Part 416, Subpart K. MPP, Section 49-040.11 states that detailed resource rules are found in 20 CFR, Part 416, Subpart L. The regulations in 20 CFR reflect the sponsor-deeming provisions that were in effect for SSI/SSP prior to the enactment of

the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law [PL] 104-193, 8 U.S. Code, Section 1631). Public Law 104-193 changed the rules for sponsor deeming when it created the New Affidavit.

The sponsor-deeming regulations in 20 CFR, Section 416.1160 require deeming to occur regardless of whether or not income of the sponsor is actually made available to the applicant/recipient. It does not provide for any exception when the sponsor abandons his or her responsibility to support the immigrant. It also states that when two different deeming rules could apply because the immigrant's sponsor is also his or her ineligible spouse or parent (of a minor child), the spouse-to-spouse or parent-to-child deeming rules would apply. Please note that the instructions found in 20 CFR still apply to persons whose sponsor signed the Old Affidavit (I-134).

The new deeming rules (that apply only in conjunction with the New Affidavit) have recently appeared in the Program Operations Manual System (POMS), which reflects the Social Security Administration's (SSA's) interpretation of 8 U.S. Code, Section 1631. The SSA uses POMS to provide operational instructions to its field offices for administration of the SSI/SSP program. The new deeming rules are not reflected in 20 CFR as of the date of this letter. Therefore, the instructions found in POMS will be used, in lieu of 20 CFR, as the basis for the instructions in this ACL that affect sponsor-deeming in CAPI for immigrants whose sponsor(s) signed the New Affidavit.

THE INDIGENCE EXCEPTION (*Ref.: 8 U.S. Code, Section 1631 and Section 1183a; POMS SI 00502.280*)

General Policy

Generally, if an immigrant's sponsor signed the New Affidavit, the income and resources of the sponsor (and the sponsor's spouse if living in the same household) are deemed to the immigrant for purposes of determining CAPI eligibility. This general rule is suspended under the indigence exception. When deeming is suspended under this exception, the only income from the sponsor that is counted against the immigrant is the amount of cash or in-kind income that the immigrant actually receives from the sponsor. A sponsor's resources are considered to be the immigrant's resources only if the immigrant has an ownership interest in them, can convert them to cash, and is not legally restricted from using them.

NOTE: References throughout this ACL to "sponsor" also include the sponsor's spouse who lives in the same household as the sponsor.

When the indigence exception is applied and CAPI benefits are paid or increased, the immigrant's sponsor is potentially liable for repayment of any CAPI benefits paid. (Ref.: 8 U.S. Code, Sections 1183(a), (b), and (e).)

Application of the Exception

The indigence exception applies when:

- Sponsor-deeming results in denial, suspension, or reduction of CAPI benefits; and
 - The immigrant is unable to obtain both food and shelter; and
 - The immigrant completes and signs the Indigence Exception Statement (form SOC 809); and
 - The county determines that the indigence exception applies.
- (Ref.: POMS SI 00502.280 B)

The indigence exception does **NOT** apply when:

- The immigrant lives with his or her sponsor. (Assume the sponsor is providing food and shelter.); or
 - The immigrant lives with someone other than the sponsor and receives free room and board, even if the immigrant's income is less than the SSI rate.
- (Ref.: POMS SI 00502.280 B)

In determining whether the immigrant is unable to obtain food and shelter consider:

- All of the immigrant's own income and resources (including SSI and other income that was excluded when determining CAPI, such as General Assistance and Food Stamps); and
 - The income and resources of the immigrant's spouse (if living together) or parent(s) (if living with the minor immigrant); and
 - Any cash, food, housing, or other assistance provided by other individuals or agencies (including the sponsor).
- (Ref.: POMS SI 00502.280 B)

While income otherwise excludable for CAPI is counted for the indigence test, do not count items that are not income (e.g. medical and social services) under MPP, Section 49-035.6. Also, for the indigence test, in-kind support and maintenance should be counted at its actual value, not the presumed maximum value (PMV). In determining the immigrant's resources for the indigence test, include all liquid resources, even excluded liquid resources such as burial funds.

(Ref.: POMS SI 00502.280 B)

If the immigrant is living apart from his or her sponsor and not receiving free food and shelter in another person's household, determine that the immigrant is unable to obtain food and shelter if:

- The total income (of all kinds) that the immigrant receives from all sources is less than the federal SSI rate (\$545 for an individual; \$817 for a couple as of January 1, 2002); and
- The resources available to the immigrant are less than the applicable CAPI resource limit.

(Ref.: POMS SI 00502.280 B)

Period When the Indigence Exception Applies

When the criteria for this exception are met, deeming is suspended for 12 consecutive months under 8 U.S. Code, Section 1631(e)(2). The 12-month period can begin at any time when all of the conditions are met. It can be effective with the first month of eligibility or in a subsequent month. During the 12 consecutive months of suspension (including any non-payment months within that period), sponsor deeming does not apply, even if the non-citizen ceases to meet the indigence test (e.g., the sponsor's support increases). However, any changes in the non-citizen's income, including changes in the amount of income or in-kind support provided by the sponsor, are counted as income and would affect the CAPI payment amount.

How Income and Resources Are Counted During the Exception Period

When deeming is suspended under this exception, the usual income policies (MPP, Section 49-035) are applied to any contributions (cash or in-kind) that the non-citizen receives from the sponsor or any other source. So, only the income that the non-citizen actually receives from the sponsor is counted for CAPI purposes. Under the indigence exception, if the sponsor provides no income or support, no income from the sponsor is chargeable.

Under the indigence exception, the resources policy described in MPP, Section 49-040.2 will apply in determining countable resources for CAPI recipients and applicants; the sponsor's resources will not be deemed to the immigrant. This means that resources owned by the sponsor are considered to be the immigrant's resources only if the immigrant: 1) has an ownership interest in them; and 2) has the right, authority, or power to convert the resource to cash; and 3) is not legally restricted from using the resources for his or her support.

Referral of Cases to the Immigration and Naturalization Service (INS)

INS is tracking the failure of sponsors to adequately support those sponsored. 8 U.S. Code, Section 1631(e)(2) requires that INS be notified in every case where the indigence exception applies. When the county approves the indigence exception that allows CAPI eligibility, the county must notify INS of that fact and send a copy of the notification to the California Department of Social Services (CDSS).

The county must send a copy of the indigence exception determination to:

Immigration and Naturalization Service
Statistics Branch
425 I Street, NW
Washington, DC 20536

Also send a copy of the INS notification to:

California Department of Social Services
Adult Programs Branch
Cash Assistance Programs Unit
744 P Street, M.S. 19-96
Sacramento, CA 95814

County Responsibilities in Applying the Indigence Exception

- Obtain completed form SOC 809 signed by the immigrant regarding his or her living arrangements and income.
- Contact the sponsor to confirm the immigrant's allegations regarding the amounts of income and resources that the sponsor provides or makes available to the immigrant. If the sponsor's whereabouts are unknown, contact INS using the Document Verification Request (INS form G-845) to obtain the sponsor's address. If you cannot locate the sponsor, accept the immigrant's signed allegation if the allegation is credible and does not conflict with other information in the file. If the sponsor's whereabouts are known, it is the immigrant's responsibility to ensure that the sponsor provides confirmation of the immigrant's allegations.
- Determine, based on the immigrant's living arrangements and income (and sponsor's verification, when available), if the indigence exception applies. Include a written determination (use the attached Indigence Exception Determination form SOC 813) in the casefile. If it does apply:
 - Determine the amount of income the immigrant receives and resources available to the immigrant. Determine CAPI eligibility and payment amount based on these figures.
 - Send a copy of the SOC 813 form to INS and CDSS.

Example

Mrs. Trent, an immigrant whose sponsor has executed a New Affidavit, alleges during her initial CAPI interview on October 10, 2002 that her sponsor gives her only \$350 per month in cash and no other support. Mrs. Trent lives alone. The sponsor verifies her allegation. The county determines that the criteria for the indigence exception are met because she doesn't live with her sponsor, does not receive free room and board from anyone else, and her income is less than the SSI rate.

Effective with November 2002, her first month of eligibility, deeming is suspended for 12 months and her income of \$350 is used to calculate her CAPI benefit amount.

MULTIPLE DEEMING SITUATIONS

For immigrants whose sponsor signed the New Affidavit, if the sponsor is also the immigrant's ineligible spouse or parent, sponsor deeming, not spousal or parental deeming, applies in the CAPI case. This is the reverse of the policy that applies for Old Affidavit cases.

Any questions regarding this notice should be directed to your Cash Assistance Programs Unit analyst at (916) 229-4582.

Sincerely,

***Original Document Signed By
Donna L. Mandelstam on 8/29/02***

DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division

Attachments

CASH ASSISTANCE PROGRAM FOR IMMIGRANTS (CAPI) INDIGENCE EXCEPTION STATEMENT

NAME OF CAPI APPLICANT OR RECIPIENT	SOCIAL SECURITY NUMBER
NAME OF PERSON MAKING STATEMENT (IF DIFFERENT)	RELATIONSHIP

I am applying for the Indigence Exception because:

- ☐ I am currently unable to obtain food and shelter with the support I am receiving from my sponsor(s) plus my own income and resources, and
- ☐ I am not currently living with my sponsor(s).

I am currently receiving the following support from my sponsor(s) (Enter "none" if no support is received):

SOURCE OF SUPPORT	TYPE OF SUPPORT (CASH OR IN-KIND)	AMOUNT OF SUPPORT
		\$
		\$
		\$

I understand that I must report any changes in the income I receive from my sponsor (*or anyone else*) to my county worker.

I understand that this situation must be reported to the Immigration and Naturalization Service (INS) in accordance with federal law.

I/we understand that anyone who knowingly lies or misrepresents the truth or arranges for someone to knowingly lie or misrepresent the truth is committing a crime that may be punishable under State law.

I/we certify under penalty of perjury that the statements given on this form are the truth as I/we know it.

SIGNATURE OF RECIPIENT	DATE:	PHONE NUMBER: ()
SIGNATURE OF SPOUSE	DATE:	
WITNESS, IF YOU SIGNED WITH AN "X"	DATE:	
SIGNATURE OF INTERPRETER OR PERSON COMPLETING FORM ON YOUR BEHALF:	DATE:	
RELATIONSHIP TO RECIPIENT:	PHONE NUMBER: ()	

PERSONAL INFORMATION NOTICE

Pursuant to the Federal Privacy Act (P.L. 93-579) and the Information Practices Act of 1977 (Civil Code Sections 1798, et seq.), notice is hereby given for the request of personal information by this form. The requested personal information is voluntary. The principal purpose of the voluntary information is to facilitate the processing of this form. The failure to provide all or any part of the requested information may delay processing of this form. No disclosure of personal information will be made unless permissible under Article 6, Section 1798.17 of the IPA of 1977. Each individual has the right upon request and proper identification, to inspect all personal information in any record maintained on the individual by an identifying particular. Direct any inquiries on information maintenance to your IPA Forms Officer.

CASH ASSISTANCE PROGRAM FOR IMMIGRANTS (CAPI) INDIGENCE EXCEPTION DETERMINATION

NAME OF APPLICANT/RECIPIENT		SOCIAL SECURITY NUMBER
NAME OF APPLICANT/RECIPIENT (SPOUSE)		SPOUSE'S SOCIAL SECURITY NUMBER
NAME OF SPONSOR	SPONSOR'S SOCIAL SECURITY NUMBER	NAME OF SPONSORED IMMIGRANT
NAME OF SPONSOR	SPONSOR'S SOCIAL SECURITY NUMBER	NAME OF SPONSORED IMMIGRANT

Living Arrangements

- ☐ Is NOT living with sponsor
 ☐ Living with sponsor
☐ Lives with others and pays for room and board
 ☐ Lives with others and receives Free room and board
☐ Lives Independently

Income

Total cash and in-kind contributions from sponsor(s)	\$
Total cash and in-kind contributions from others	\$
Total of recipient's/applicant's other income (including spouse's if living together)	\$
Total of income from all sources	\$
Federal SSI rate	\$

Resources

Sponsor(s)' resources available to applicant/recipient	\$
Applicant's/recipient's own resources (including spouse's if living together)	\$
Total resources available to applicant/recipient	\$
Federal SSI resource limit (\$2,000 for an individual, \$3,000 for a couple)	\$

Comments

Based on the information summarized on this form, it is determined that the indigence exception does / does not (*circle one*) apply to the applicant(s)/recipient(s) named above.

SUPERVISOR'S SIGNATURE	DATE	WORKER	DATE
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CAPI is a public assistance program funded by the State of California. If the indigence exception is being applied to the applicant/recipient named on this form, forward a copy of this form to:

Immigration and Naturalization Service
Statistics Branch
425 I Street, NW
Washington, DC 20536

AND

California Department of Social Services
Adult Programs Branch
744 P Street, M.S. 19-96
Sacramento, CA 95814-6413